

GUSTAVUS A. BREMER, ET UX.

IBLA 75-325

Decided June 16, 1975

Appeal from decision of Oregon State Office, Bureau of Land Management, dismissing protest of failure of Oregon State Office to determine claims of ownership of certain lands within the State of Washington.

Affirmed.

1. Homesteads (Ordinary): Generally -- Homesteads (Ordinary): Lands Subject to

An application for homestead entry for land in a national forest must be rejected as the Secretary of the Interior has no authority to permit such a disposition.

APPEARANCES: Gustavus A. Bremer, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Gustavus A. Bremer, et ux., appeal from the November 5, 1974, decision of the Oregon State Office, Bureau of Land Management (BLM), which dismissed their protest of the failure of that office to determine their claim of ownership to land located in sections 22 and 26, T. 27 N., R. 19 E., Willamette Meridian, Wenatchee National Forest, State of Washington.

In December, 1973, appellants recorded notices in Chelan County, Washington, that they claimed "assignment and/or ownership" of the W 1/2 SW 1/4 and E 1/2 SE 1/4, section 22, and the N 1/2 NW 1/4, section 26, T. 27 N., R. 19 E., W.M., Wenatchee National Forest, Washington. (see appendix) At the same time, they filed claims of ownership for the same land with the Oregon State Office, BLM. The BLM refused to accept the claims for recordation and on December 26, 1973, declared the "claims" null and void because the land

in question was either privately owned or part of Wenatchee National Forest. That decision also noted that the Bremers did not state under which public land law they claimed the land, and therefore the claims were not acceptable. 1/

After the December 26, 1973, letter by the Oregon State Office, BLM, there ensued a flurry of correspondence between that office and appellants. Essentially, appellants were trying to find a way to assert a legitimate claim to the land in question; at the same time the BLM was trying to explain to appellants why there can be no basis to a claim for the land.

Unfortunately, another question of great legal complexity was mixed in with the issue of whether appellants could obtain the land. That question involves the validity of a dependent resurvey of the township in which the land in this case is located. 2/ However, the BLM finally treated one of appellants' letters as a protest to the failure of that office to determine claims of ownership by appellants. On November 5, 1974, the BLM issued a decision dismissing appellants' protest. That decision determined that the

1/ We note that regulation 43 CFR 2091.1 required BLM to accept all "applications" for filing. The assertion of claims by appellants did not constitute an application and, therefore, we do not find that the BLM action was improper in refusing to record the asserted "claims".

2/ The original survey was accepted in 1883. Pursuant to that survey Mr. Bremer's father obtained 120 acres of land in 1908 described as SW 1/4 SW 1/4 and E 1/2 SW 1/4 of section 14, T. 27 N., R. 19 E., W.M., Washington. According to the dependent resurvey, which was accepted in 1923, appellants' land was described as "Tract 43." But the unfortunate result of the 1923 survey was to create conflicts among various patentees. This happened because (apparently) more land in part of the township was patented than actually existed. Thus, when the resurvey was accepted, several parcels, which had been patented, overlapped each other. In 1967 claims to appellants' lands were asserted by others. These claims, at least in part, were ultimately settled in the state courts, and, according to appellant, favorably to him. Appellants apparently seek to justify their claim to the land at issue in this case as indemnity for the balance of the land allegedly "lost" to them as a consequence of the resurvey. There is still no clear answer, however, to the effect of the dependent resurvey. Someone in the Oregon State Office has inserted in the case file a request that this Board determine the effect of the dependent resurvey accepted in 1923. The issue is not before us on appeal, and this Board performs only an adjudicatory function and does not advise on legal matters not presented as issues on appeal.

land in question is national forest land and not open to entry. Consequently, the Oregon State Office, BLM, rejected any claim of ownership to the land by the Bremers.

Appellants assert in their statement of reasons for appeal that they claim the land, based on 43 CFR 2511.0-8, which is the provision for ordinary homesteads. Appellants also agree that the land has never been conveyed by the United States and is, therefore, part of Wenatchee National Forest. They argue, however, that others are allowed to occupy the lands and that the Forest Service has "abandoned" the land.

[1] The Act of June 11, 1906, 34 Stat. 233, as amended, 16 U.S.C. § 506 (1958), provided for homestead entries on agricultural lands in national forests. However, that Act was repealed by section 4 of the Act of October 23, 1962, 76 Stat. 1157. Thus, there is no longer any authority for allowing homestead entries within national forests. August H. Snyder, 1 IBLA 130, 131 (1970); Lee C. Robinson, A-30196 (April 13, 1964). Moreover, appellants did not comply with any requirement of the regulations relating to the filing of a petition-application for entry under the homestead law. See 43 CFR 2511.3-1.

To establish a right to public land an applicant must file an appropriate application under an applicable public land law, or otherwise file a claim in accordance with a specific statutory provision. Merely to assert that they claim the land offers no basis by which this Department can adjudicate or recognize the asserted "claim." Appellants have referred to no law under which their asserted "claim" may be considered. Accordingly, there is no basis for BLM's further considering appellants' claim in the absence of an application or other properly asserted claim under a Federal statute.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Martin Ritvo
Administrative Judge

APPENDIX

Appellants' recorded notices are identical with the exception of dates and land descriptions, read as follows:

To whom it may concern:

As of this date, [date], after careful and diligent search of the records of Chelan County, State of Washington, United States of America, I find the following exists, to wit:

That [land description] has never been divested by the United States of America.

Therefore, I, Gustavus A. Brewer, my wife, Elva M. Brewer, each alone or as a marital community, our heirs or assigns forever, under the applicable or appropriate laws of The United States of America, do hereby as to the best of my knowledge, make first claim for assignment of and/or ownership of the above described parcel of real property, under any possible status as pertaining to and/or pertaining within the laws of the United States of America.

Enclosed is One Dollar (\$1.00) United States Currency (U.S. Postal Money Order) tendered in good faith.

[signature] (Seal)

[signature] (Seal)

Notary Seal

Gustavus and/or Elva Bremer Star Route, Entiat, Washington 98822

STATE OF WASHINGTON COUNTY OF CHELAN

I, (Name), a Notary Public in and for the State of Washington, do hereby certify that on this 14th day of December, 1973, personally appeared before me Gustavus A. Bremer and Elva M. Bremer to me known

to be the individuals and acknowledged that they signed and sealed the same as their free and voluntary act.

(signature)

NOTARY PUBLIC, in and for the State
of Washington, residing at Wenatchee.
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